STATE OF MICHIGAN

COURT OF APPEALS

SALVATORE MIGALDI,

Plaintiff-Appellee,

v

DUANE SHERMAN,

Defendant,

and

ELECTRONIC DATA SYSTEMS,

Defendant-Appellant.

UNPUBLISHED
May 19, 2000

No. 212917
Ingham Circuit Court
LC No. 96-083303-CZ

Before: Kelly, P.J., and Doctoroff and Collins, JJ.

PER CURIAM.

Defendant Electronic Data Systems Corporation ("EDS" or "defendant") appeals as of right from the trial court's order denying its motion for judgment notwithstanding the verdict ("JNOV") and its motion for a new trial in this age discrimination case. EDS also challenges the trial court's denial of its motions for directed verdict. We affirm.

Plaintiff Salvatore Migaldi, a former General Motors ("GM") employee, was transferred to EDS in 1985 when GM purchased EDS. His first two performance evaluations at EDS were favorable.[1] Subsequently, plaintiff's ratings dropped, and in 1992, he was put on a performance improvement plan. Plaintiff met the terms of the plan, but was discharged at the age of forty-five during EDS's 1993 "resource alignment." Plaintiff filed suit, alleging that he was discharged because of his age, and the case went to trial. Defendant argued that plaintiff was discharged during a legitimate reduction in workforce (RIF) on the basis of poor performance, as determined by his most recent performance evaluations. The jury found in favor of plaintiff.

Defendant argues first on appeal that the trial court erred in failing to grant its motions for directed verdict or JNOV because plaintiff failed to prove a prima facie case of age discrimination. This

Court reviews a trial court's grant or denial of a motion for directed verdict or JNOV de novo. *Hord v Environmental Research Institute of Michigan*, 228 Mich App 638, 641; 579 NW2d 133 (1998); *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). A motion for a directed verdict or for JNOV should be granted only when, viewing the evidence and all legitimate inferences in the light most favorable to the nonmoving party, there are no issues of material fact with regard to which reasonable minds could differ. *Matras v Amoco Oil Co*, 424 Mich 675, 681-682; 385 NW2d 586 (1986); *Cipri v Bellingham Foods*, 235 Mich App 1, 14; 596 NW2d 620 (1999).

Plaintiff alleged age discrimination in violation of the Elliot Larson Civil Rights Act, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a), which provides, in relevant part:

> (1) An employer shall not do any of the following:
>
> (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.

An age discrimination claim can be based on two theories: (1) disparate treatment, which requires a showing of either a pattern of intentional discrimination against protected employees, or against an individual plaintiff, or (2) disparate impact, which requires a showing that an otherwise facially neutral employment policy has a discriminatory effect on members of a protected class. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 177 n 26; 579 NW2d 906 (1998). Plaintiff argued his discrimination claim, and the jury was instructed, under a disparate treatment theory. A claim of disparate treatment, or intentional, discrimination may be proved by direct or indirect evidence. *Meagher, supra* at 709-710.

To establish a prima facie case of intentional discrimination, a plaintiff must show that he was (1) a member of the protected category, (2) subjected to an adverse employment action, (3) qualified for the position, and (4) discharged under circumstances that give rise to an inference of unlawful discrimination. *Lytle, supra* at 172-173.[2] Once the plaintiff establishes a prima facie case, the burden shifts to the employer to articulate and set forth admissible evidence of a legitimate nondiscriminatory reason for its decision.[3] *Id.* at 173. If the defendant meets its burden of production, the plaintiff must then prove by a preponderance of the evidence that the legitimate reason offered by the defendant was a mere pretext, and that the plaintiff's age was a determining factor in the adverse employment action. *Id.* at 173-174; *Town v Michigan Bell Telephone Co*, 455 Mich 688, 697 (Brickley, J., with Boyle and Weaver, JJ., concurring), 707 (Riley, concurring in relevant part); 568 NW2d 64 (1997). See also *Matras, supra* at 682-683. Accordingly, in this case, where defendant produced evidence of a nondiscriminatory reason for plaintiff's termination, i.e., its RIF, for plaintiff to survive a motion for a directed verdict, he was required to present evidence that, when viewed in a light most favorable to plaintiff, would permit a reasonable trier of fact to find that plaintiff was discharged due to his age. See *Meagher, supra* at 709-710. Age need not be the only reason or main reason for the discharge, but must be one reason that the plaintiff was discharged. *Id.* at 710; *Matras, supra* at 682. The question is whether age was *a* determining factor in the discharge. *Meagher, supra* at 710; *Matras, supra* at 684.

Defendant argues that because plaintiff did not produce evidence that he was discharged under circumstances that would give rise to an inference of unlawful discrimination, he failed to establish a prima facie case of intentional discrimination sufficient to shift the burden to defendant under the *McDonnell Douglas* framework.[4] Plaintiff contends that he established a prima facie case by presenting evidence that (1) his supervisor, Ariston Bautista, and Bautista's superior, Duane Sherman, downgraded plaintiff's performance ratings after he reached the age of forty; (2) Sherman indulged stereotypes that were biased against older workers; (3) other, younger, workers in Sherman's department who were less qualified than plaintiff were retained, while plaintiff and two other older workers from Sherman's department were discharged; (4) employees over forty were discharged at an extremely disproportionate rate from the Lansing Automotive Division of EDS ("LAD"), under the supervision of Jeffery Kelly, as well as defendant's entire GM North American Operations ("NAO") during defendant's 1993 RIF.

We conclude that plaintiff raised an inference of unlawful discrimination by presenting evidence that younger employees in Sherman's department who were similarly situated to plaintiff were retained when he and two other older employees in Sherman's department lost their jobs during defendant's 1993 RIF. Defendant acknowledges that where a plaintiff's employment has been terminated due to a corporate reorganization or reduction in force, the plaintiff can establish an inference of age discrimination by proving that similarly situated younger employees retained employment or otherwise received better treatment. See *Lytle*, *supra* at 178-179. Defendant contends, however, that no reasonable trier of fact could conclude that the four younger employees to whom plaintiff compares himself were similarly situated to plaintiff; therefore, any dissimilar treatment does not raise an inference of unlawful discrimination.

Defendant relies on *Town*, *supra*, to support his argument that to be considered similarly situated, all of the relevant aspects of the employment situations of those employees who are being compared must be "nearly identical." See *Id.* at 700, quoting *Pierce v Commonwealth Life Ins Co*, 40 F3d 796, 802 (CA 6, 1994). However, Sixth Circuit Court of Appeals cases subsequent to *Pierce* have clarified that the standard is not meant to require "a comparison between the employment status of the plaintiff and other employees in every single aspect of their employment." *Ercegovich v Goodyear Tire and Rubber Co*, 154 F3d 344, 352 (CA 6, 1998).[5] The *Ercegovich* court explained that

> [t]he plaintiff need not demonstrate an exact correlation with the employee receiving more favorable treatment in order for the two to be considered "similarly-situated;" rather, as this court has held in *Pierce*, the plaintiff and the employee with whom the plaintiff seeks to compare himself or herself must be similar in "all of the relevant respects." [*Id.* Citation omitted.]

Here, the four younger employees in Sherman's department who, evidence indicated, were retained during defendant's 1993 RIF and who, plaintiff contends, were similarly situated to him, are Holly Dickinson, Sandra Cojocari,[6] Patricia Daniels, and Edie Koerth. Defendant argues that because Cojocari, Daniels, and Koerth did not fall under Bautista's supervision, they could not be found to be similarly situated to plaintiff. However, because there was evidence that they all fell within Sherman's chain of command, we do not believe that the difference in immediate supervisors is significant. See

Mims v Electronic Data Systems Corp, 975 F Supp 1010, 1015 (ED Mich, 1997). Defendant further contends that because plaintiff did not show that he had job duties or skills similar to Cojocari, Daniels, or Koerth, he was not similarly situated to them. However, exact correlation in job duties or skills is not a prerequisite to being found similarly situated. *Mims*, *supra* at 1015-1016.

Defendant also contends that differences in performance evaluation ratings among plaintiff and Cojocari, Daniels, Dickinson, and Koerth preclude a finding that they were similarly situated. While there were slight variations in performance ratings among plaintiff, Cocojari, Daniels, and Koerth during the relevant time period, we note that they all fell within the criteria for "lower performers" designated by defendant, i.e., they each received a rating of "Solid Generally" or less in one of their three most recent evaluations.[7] Supervisors then had the option, as acknowledged by Jeffrey Kelly, on an "ad hoc" basis[8], to make exceptions for people based on circumstances that the supervisors felt warranted retaining an employee despite a recent low rating. Although defendant argues that such mitigating circumstances preclude a finding that plaintiff was similarly situated to the referenced employees, because Cojocari, Daniels, and Koerth were all "lower performers" based upon objective criteria established by defendant in implementing its RIF, a reasonable juror could find that they were similarly situated with regard to performance.

We conclude, therefore, that a reasonable juror could find that "others, similarly situated to [plaintiff] and outside the protected class, were unaffected by [defendant's] adverse conduct," *Town*, *supra* at 695. Accordingly, we find that plaintiff established a prima facie case of age discrimination sufficient to shift the burden to defendant.

Defendant argues next that even if plaintiff did establish a prima facie case of age discrimination sufficient to shift the burden to defendant, once defendant produced evidence that plaintiff was discharged as a result of defendant's RIF based on his poor performance ratings, plaintiff failed to satisfy his burden of proving that defendant's articulated reason was pretextual and that age was a determining factor in his dismissal.[9] Plaintiff contends that he satisfied this burden by presenting a statistical analysis of the discharges that took place during defendant's 1993 RIF, showing that older employees were terminated at a much higher rate than younger employees across both the LAD and defendant's entire GM NAO organization, and that the chances of such a disparity occurring as a result of an age-neutral process were small.

Under Michigan case law, statistical evidence may be used to establish a prima facie case of discrimination and to show that the proffered reasons for a defendant's conduct are pretextual. *Dixon v WW Grainger, Inc*, 168 Mich App 107, 118; 423 NW2d 580 (1987). While defendant does not appear to challenge the use of statistics generally, it argues that the statistical analysis proffered in this case was irrelevant and therefore inadmissible because it was not limited to plaintiff's immediate "employment unit," but included all of defendant's GM NAO workforce.[10] Relying on *Mims*, *supra*, defendant contends that because the decision regarding plaintiff's employment was made by Bautista and Sherman, the only terminations that are relevant for comparison purposes are those that they authorized. For the same reasons, argues defendant, the statistical analysis plaintiff presented of those discharges that occurred at LAD are overbroad and irrelevant as well.

In *Mims,* the court found that statistical analysis of discharge patterns for EDS's entire GM NAO organization, which employed nearly 14,000 people, was not probative of whether the decision to discharge the plaintiff in that case was made on the basis of age. The court stated:

> Because Mims' proffered statistical evidence is based on a population far larger than her own employment unit, and there is no evidence that decisionmakers in her unit were governed by any broader policy, the evidence is not probative of disparate treatment on the basis of race or age. [*Id.* at 1018.]

As noted above, however, plaintiff in this case presented statistical analysis not only of the pattern of discharges from the entire GM NAO organization, but also of the discharges from Kelly's LAD group. Defendant argues that Kelly's group is not the relevant group to analyze either, because Kelly simply adopted the recommendations of those who directly supervised the discharged individuals. However, Kelly testified that he met with his "direct reports," e.g., Sherman, "to evaluate if there were any special circumstances that would merit evaluation of a particular individual on the list and then justify in my – my own mind that the ratings that they received were – were accurate and justified." Thus, not only did Kelly have ultimate responsibility for deciding who would be discharged from his division, he also involved himself directly in the decisionmaking process. See *Mims, supra* at 1015. We find, therefore, that analysis of statistical evidence of discharges from Kelly's division, in which plaintiff was employed, is relevant to the question of whether age was a determining factor in plaintiff's discharge. Moreover, we find that when viewed in a light most favorable to plaintiff, the statistical evidence, together with plaintiff's proofs that others in Sherman's group who were similarly situated to him were not affected by defendant's RIF, would allow a reasonable juror to infer that age was a determining factor in plaintiff's discharge. Accordingly, the trial court did not err in denying defendant's motions for directed verdict and JNOV.

Defendant's next argument on appeal is that the trial court abused its discretion in admitting deposition testimony of Jeffrey Kelly concerning defendant's profitability. We disagree. This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Ellsworth v Hotel Corp of America,* 236 Mich App 185, 188-189; 600 NW2d 129 (1999). An abuse of discretion is found if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *Id.* An error in the admission or exclusion of evidence is not a ground for vacating, modifying, or otherwise disturbing a judgment unless refusal to do so would be inconsistent with substantial justice. MCR 2.613 (A); *Davidson v Bugbee*, 227 Mich App 264, 266; 575 NW2d 574 (1997).

Generally, all relevant evidence is admissible and irrelevant evidence is not. MRE 402; *Ellsworth, supra* at 188-189. Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401; *Ellsworth, supra* at 188. Even if relevant, however, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403; *Dunn v Nundkumar*, 186 Mich App 51, 55; 463 NW2d 435 (1990).

Defendant cites *McDonald v Stroh Brewery Co*, 191 Mich App 601; 478 NW2d 669 (1991) in support of its argument that evidence of profitability is not admissible to show that an employer's asserted reduction in workforce is a pretext for discrimination because the wisdom of a reduction in workforce is not for the jury to decide. However, in *McDonald*, this Court did not rule that evidence of an employer's profitability is inadmissible. Rather, this Court concluded that the trial court properly excluded testimony regarding the economic necessity of terminations because that testimony *was consistent with that of a number of other witnesses* and would therefore have been cumulative. *Id.* at 607-608. Further, while this Court acknowledged that there is no requirement that the economic reasons given by an employer for a reduction in workforce rise to the level of a necessity, this Court stated that they must be bona fide. *Id.* at 608. Here, defendant argued that plaintiff was terminated as part of a corporate-wide effort to reduce costs and increase profits. Under *McDonald*, evidence of defendant's profitability was relevant to determining whether that effort was bona fide or a pretext for discharging people on a discriminatory basis.[11] Furthermore, the danger of unfair prejudice did not substantially outweigh the probative value of the evidence. We conclude, therefore, that the trial court did not abuse its discretion in admitting the deposition testimony of Kelly regarding defendant's profitability. In any event, any error in the admission of the challenged evidence was harmless. MCR 2.613(A). The challenged testimony was extremely limited and equivocal, at best, on the issue of defendant's profitability.

Defendant argues next that the trial court abused its discretion in admitting evidence concerning defendant's document retention policies. Defendant contends that this evidence was irrelevant and highly prejudicial because the evidence was used to falsely imply that defendant intended to shield evidence from being produced and to suggest that the jury should use the evidence to conclude that defendant's asserted reasons for its RIF were pretextual. However, one of plaintiff's supervisors testified that a document known as a "termination explanation" had been prepared for plaintiff, that the document produced by plaintiff at trial was not that document, and that he had no knowledge of where that document was. In view of this testimony, evidence of defendant's document retention policies would assist the trier of fact in judging the significance of the fact that the document appeared to be missing. Furthermore, defendant relied on a number of documents addressing plaintiff's performance and employment actions taken with regard to him that were kept pursuant to defendant's document retention policies. Whether the record of his employment was complete would be relevant to determining what weight to ascribe to the documents produced by defendant. While evidence indicating that defendant had a practice of keeping "side files" that might be immune to discovery would be prejudicial, the potential for *unfair* prejudice does not substantially outweigh the probative value of the evidence. Therefore, the court did not abuse its discretion in admitting the evidence.

Defendant argues next that the trial court erred in admitting evidence of statistical analysis of the ages of individuals affected by defendant's RIF. Most of defendant's arguments with regard to the admissibility of plaintiff's statistical evidence are addressed above, where we concluded that plaintiff's statistical analysis of patterns of discharges within the LAD under the supervision of Jeffrey Kelly was relevant to establishing pretext and that plaintiff's age was a determining factor in his discharge. While the probative value of the statistical evidence of the patterns of discharge within defendant's entire GM NAO organization is low, it is not substantially more prejudicial than probative. As plaintiff's expert

testified, the discharge pattern in the entire GM NAO organization was consistent with that in Kelly's LAD group. Also, contrary to *Mims*, there are federal cases in which the courts have found statistical evidence regarding discharge of employees that encompasses a broader population than the employee's immediate "employment unit," or those who all report to the same immediate supervisor, to be relevant to the question whether an employer has discriminated against an individual plaintiff. See, e.g., *McMahon v Libbey-Owens-Ford Co,* 870 F2d 1073, 1078 (CA 6, 1989); *Hollander v American Cyanamid Co,* 895 F2d 80, 85 (CA 2, 1990). Moreover, other cases discuss the problems associated with using too small a sample for statistical analysis. See, e.g., *Simpson v Midland-Ross Corp*, 823 F2d 937, 944 (CA 6, 1987); *Sengupta v Morrison-Knudsen Co, Inc,* 804 F2d 1072, 1076-1077 (CA 9, 1986). Accordingly, we cannot conclude that there was no justification or excuse for the trial court's ruling. *Ellsworth, supra.*

Defendant argues next that the trial court erred in admitting Jeffrey Kelly's deposition testimony concerning defendant's hiring practices with respect to individuals over the age of forty when plaintiff never offered evidence of the demographics of the relevant applicant pool from which defendant selected its employees. While we acknowledge that the probative value of the evidence is weak, we do not believe that its probative value was substantially outweighed by the danger of unfair prejudice. See *McMahon, supra*. Again, Kelly's testimony could be described as equivocal, at best, on the issue of the ages of those hired by EDS. Further, in view of the statistical analysis of the ages of those terminated as compared to those retained during defendant's 1993 RIF, as well as the comparison of the treatment of plaintiff to that of others similarly situated in Sherman's group during defendant's RIF, any error in the admission of Kelly's testimony was harmless. MCR 2.613(A).

Defendant's final argument on appeal is that the prejudicial effect of the erroneously admitted evidence denied it a fair trial. The trial court's decision whether to grant a new trial is reviewed for an abuse of discretion. *Setterington v Pontiac General Hosp,* 223 Mich App 594, 608; 568 NW2d 93 (1997).

Defendant argues that it is entitled to a new trial under sections (a), (e), and (g) of MCR 2.611(A)(1), which provides, in pertinent part:

> A new trial may be granted on all or some of the issues when the substantial rights of a party were materially affected and there was:
>
> (a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial.
>
> * * *
>
> (e) A verdict or decision against the great weight of the evidence or contrary to law.
>
> * * *
>
> (g) Error of law occurring in the proceedings, or mistake of fact by the court.

In light of our analysis of the preceding issues, defendant is not entitled to a new trial under subsections (a) or (g). To the extent that defendant argues that the verdict was against the great weight of the evidence, it did not thoroughly brief the issue; rather, defendant points to evidence which, it contends, supported its argument that age did not play a role in plaintiff's termination. Defendant contends (1) that plaintiff's assertion that his supervisors purposely downgraded his performance evaluations because they wanted to establish grounds for firing him are not credible, given that all of plaintiff's supervisors testified that they had no knowledge that an RIF was imminent; (2) that following plaintiff's discharge, three employees, two of whom were older than he, were transferred into his group; (3) that when plaintiff's performance dipped to "marginal" at one point, his management team did not enter that information into the personnel system, but handled it internally so that it would not be on plaintiff's record; and (4) that everyone who was involved in plaintiff's evaluations and discharge testified that age was not a consideration.

With regard to the fact that two of the three employees transferred into plaintiff's group after his discharge were over 40, given that the older employees, including Ed Ehl, were not transferred into Sherman's group until after plaintiff, Ehl, and Meerman filed their discrimination suits, the jury was free to conclude that the evidence of older replacements did not rebut an inference of age discrimination. *Diaz v American Telephone & Telegraph*, 752 F2d 1356, 1361 (CA 9, 1985). Furthermore, given that there was sufficient evidence to preclude a motion for directed verdict in defendant's favor and JNOV, none of the other evidence, the weighing of which entails credibility determinations, would preclude a finding of age discrimination. Credibility determinations and the weighing of testimony are for the jury. *Zeeland Farm Services, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

Affirmed.

/s/ Michael J. Kelly
/s/ Martin M. Doctoroff
/s/ Jeffrey G. Collins

[1] The evidence showed that EDS uses a seven-level scale for rating its employees' job performance. One level, "Marginal," describes unsatisfactory performance. The other six of the levels describe satisfactory job performance. One of those levels (NJ) applies to employees who are new to their jobs, while the other five apply to persons who have held their jobs for longer periods. Those ratings start from the lower level of "Solid Generally" and progress upward to "Solid Meets," "Solid Exceeds," "Superior," and "Exceptional." Plaintiff's first two ratings at EDS were "Solid Exceeds."

[2] The *Lytle* Court noted that this test is an adaptation of test articulated by the United States Supreme Court in *McDonnell Douglas Corp v Green,* 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). *Lytle, supra* at 915 n 19. The Court cautioned "that it is not to be applied mechanically, but with due deference to the unique facts of the individual case." *Id.* (Citations omitted.)

[3] As noted by this Court in *Wilcoxon, supra* at 361 n 7, citing *Meagher, supra* at 710-711, reference to a prima facie case in this context does not address what level of proof a plaintiff must meet to allow a case to go to a jury, but only addresses the level of proof necessary to create a rebuttable presumption of discrimination.

[4] For purposes of completeness, we will address whether plaintiff established a prima facie case sufficient to shift the burden to defendant. However, we note that federal case law indicates that once a discrimination case has been tried on the merits, analysis on appeal of whether the initial showing of discrimination was sufficient to shift the burden is unnecessary. See *EEOC v Avery Dennison Corp,* 104 F3d 858 (CA 6, 1997); *Brownlow v Edgecomb Metal Co,* 867 F2d 960, 963 (CA 6, 1989); *Simpson v Midland-Ross Corp,* 823 F2d 937, 942 (CA 6, 1987).

[5] While not binding on this Court, federal precedent is generally considered highly persuasive when it addresses analogous issues. *DeFlavis v Lord & Taylor,* 223 Mich App 432, 437; 566 NW2d 661 (1997). In the context of discrimination cases, federal precedent is consulted liberally for guidance. See, e.g., *Radtke v Everett,* 442 Mich 368, 381-382; 501 NW2d 155 (1993).

[6] There was conflicting testimony at trial with regard to the disposition of Cojocari's employment after the 1993 RIF. Sherman testified that she was not terminated but, rather, was transferred back to an account on which she had worked previously. Her supervisor, Tom McDaniels, testified that she was terminated.

[7] Dickinson transferred into Bautista's group a few months before defendant's RIF and had not been evaluated by Bautista as of the time of the RIF. Plaintiff presented evidence that Dickinson had poor attendance and that plaintiff's skills were superior to hers. However, because Dickinson's three ratings prior to the RIF were all "Solid Meets," she did not meet the criteria of a "lower performer."

[8] Kelly acknowledged that there was no written criteria on which supervisors relied in making these exceptions.

[9] In determining whether a plaintiff has met its burden at this third stage of proof, all plaintiff's evidence, including that evidence introduced at the initial stage to establish the prima facie case, is considered. *Lytle, supra* at 178; *Town, supra* at 696.

[10] Defendant also contends on appeal that plaintiff's statistics are flawed because they do not properly account for the two-step process defendant engaged in when it implemented its 1993 RIF. However, whether the analysis was flawed is some respect goes to the weight and not the admissibility of the evidence. See MRE 104(e). Defendant had full opportunity to cross-examine plaintiff's expert at trial with regard to the reliability of his analysis, and chose not to offer its own expert to challenge the validity of the analysis. Furthermore, in its motion in limine and at trial, defendant did not contest the admission of plaintiff's evidence on the basis that the methodology was flawed, but only argued its irrelevance because of overbreadth. Arguments not raised before the trial court are not preserved for appellate consideration. *Hammack v Lutheran Social Services of Michigan,* 211 Mich App 1, 8; 535 NW2d 215 (1995).

[11] Although defendant maintains that plaintiff concedes that defendant's reduction in force was bona fide, plaintiff points to evidence that he presented at trial showing that while defendant discharged 284 people from its GM NAO organization in June 1993, it hired 300 into that organization during the second half of the year.